Formosa Resort Properties Sdn Bhd v Bank Bumiputra Malaysia Bhd

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02–26 OF 2009 (M)
RICHARD MALANJUM CJ (SABAH AND SARAWAK), HASHIM YUSOF AND JAMES FOONG FCJJ
28 JANUARY 2010

Civil Procedure — Appeal — Appeal to Federal Court — Question posed before Federal Court on whether Evidence Act 1950 draw distinction between relevancy and admissibility of evidence — Whether substratum of appellant's submission related to question posed — Whether there was miscarriage of justice by court below

The appellant filed an action against the respondent, a bank, for allegedly honouring 67 forged cheques amounting to RM411,024.70 drawn on the appellant's current account held with the respondent. The High Court dismissed the claim and the Court of Appeal affirmed the said decision. The Court of Appeal held that the evidence adduced had been 'demonstrably appreciated' by the learned trial judge who gave cogent reasons for his decision. Aggrieved by the decision, the appellant filed the present appeal and the question posed was: 'Does the Evidence Act 1950 draw a distinction between relevance and admissibility of evidence?'. The appellant submitted that: (a) the case should be remitted to the Court of Appeal for rehearing as there was miscarriage of justice occasioned in the earlier hearing; and (b) the learned High Court judge erred in refusing to admit the crucial piece of similar fact evidence adduced before the Sessions Court of Melaka in another case between the same parties involving forged cheques of the appellant as well.

Held, dismissing the appeal with costs:

(1) The substratum of the submission for the appellant did not relate to the question posed. Whilst it was trite law that all admissible evidence were relevant evidence, the converse was not necessarily true. Although a piece of evidence might be relevant it might be inadmissible for various reasons such as it was hearsay evidence, or its prejudicial effect outweighed its probative value. However, in respect of the present appeal, an answer to the question posed would neither address the real grievance of the appellant as ventilated nor resolve the dispute between the parties. As such, the court declined to answer the question posed (see paras 13–15).

(2) The main reason given by the Court of Appeal in dismissing the appeal was that there was proper and accurate appreciation of the evidence by

the learned trial judge before making the necessary findings of fact and ultimately his conclusion. The error in describing the specimen signature card as AR card by the learned trial judge did not play a critical and determinative role in his final decision. The said errors did not amount to miscarriage of justice as to warrant the remission of this matter to the Court of Appeal for rehearing before another panel. Accordingly, there was no injustice or prejudice suffered by the appellant as claimed (see paras 21–24).

[Bahasa Malaysia summary

Perayu memfailkan tindakan terhadap responden, sebuah bank, kerana didakwa menunaikan 67 cek palsu berjumlah RM411,024.70 yang dikeluarkan daripada akaun semasa perayu yang dipegang dengan responden. Mahkamah Tinggi menolak tuntutan tersebut dan Mahkamah Rayuan mengesahkan keputusan tersebut. Mahkamah Rayuan berpendapat bahawa keterangan yang dikemukakan 'terbukti dihargai dengan baik' oleh hakim bicara yang bijaksana yang memberikan alasan yang cukup untuk keputusannya. Terkilan dengan keputusan tersebut, perayu memfailkan rayuan semasa dan soalan yang diajukan ialah: 'Adakah Akta Keterangan 1950 membezakan antara perkaitan dan kebolehterimaan bukti?'. Perayu berhujah bahawa: (a) kes ini hendaklah diremit ke Mahkamah Rayuan untuk dibicarakan semula kerana terdapat ketidakadilan yang berlaku pada pendengaran yang terdahulu; dan (b) hakim Mahkamah Tinggi yang bijaksana telah terkhilaf apabila enggan menerima keterangan fakta yang sama yang sangat penting yang dikemukakan di hadapan Mahkamah Sesyen Melaka dalam satu kes lain di antara pihak yang sama yang turut melibatkan cek perayu yang dipalsukan.

Diputuskan, menolak rayuan dengan kos:

(1) Substratum hujahan perayu tidak berkaitan dengan persoalan yang dikemukakan. Walaupun ia merupakan undang-undang yang mantap bahawa semua keterangan yang boleh diterima masuk adalah keterangan yang relevan, namun yang sebaliknya tidak semestinya benar. Walaupun sesuatu keterangan itu mungkin relevan, ia mungkin tidak dapat diterima kerana pelbagai sebab antaranya jika keterangan tersebut adalah keterangan hearsay, atau kesan prejudisnya melebihi nilai probatifnya. Walau bagaimanapun, berkenaan dengan rayuan semasa, jawapan kepada soalan yang dikemukakan tidak akan menangani keluhan sebenar perayu atau menyelesaikan pertikaian antara pihak-pihak. Oleh itu, mahkamah enggan menjawab soalan yang dikemukakan (lihat perenggan 13–15).

(2) Alasan utama yang diberikan oleh Mahkamah Rayuan dalam menolak rayuan ialah kerana terdapat penilaian keterangan yang tepat dan betul oleh hakim bicara yang bijaksana sebelum membuat penemuan fakta dan

akhirnya kesimpulannya. Kesilapan dalam menggambarkan spesimen kad tandatangan sebagai kad AR oleh hakim bicara yang bijaksana tidak memainkan peranan kritikal dan penentu dalam keputusan muktamadnya. Kesilapan tersebut tidak menyebabkan ketidakadilan untuk kes ini diremit ke Mahkamah Rayuan untuk perbicaraan semula di hadapan panel yang lain. Oleh itu, tidak ada ketidakadilan atau prejudis yang dialami oleh perayu sebagaimana yang didakwa (lihat perenggan 21–24).]

Notes

For cases on appeal to Federal Court, see 2(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 1000–1034.

Cases referred to

Joceline Tan Poh Choo & Ors v V Muthusamy [2008] 6 MLJ 621, FC (refd)

Meidi-Ya Co Ltd, Japan & Anor v Meidi (M) Sdn Bhd [2009] 2 MLJ 14, FC (refd)

Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Anor v Arab-Malaysian Prima Realty Sdn Bhd & Ors [2003] 3 MLJ 257, FC (folld)

Appeal from: Civil Appeal No 02–223 of 2007 (Court of Appeal, Putrajaya)

Benjamin Dawson (Chen Wee Kian and Elaine Chong with him) (HS Chew & Co) for the appellant.

Wong Hok Mun (Azim, Tunku Farik & Wong) for the respondent.

Richard Malanjum CJ (Sabah and Sarawak) (delivering judgment of the court):

[1] This is an appeal by the appellant (plaintiff in the High Court) against the decision of the Court of Appeal dismissing its appeal on 11 February 2009.

[2] On 22 January 2007 the High Court at Melaka dismissed with costs the claim of the appellant against the respondent, a bank, (defendant in the High Court) for allegedly honouring 67 forged cheques amounting to RM411,024.70 drawn on the appellant's current account held with the respondent.

[3] On 16 June 2009 this court allowed the appellant leave to appeal on the sole question which reads:

> Does the Evidence Act, 1950 draw a distinction between relevance and admissibility of evidence?

[4] Briefly, the appellant, a housing developer in Melaka, was a customer of

the Jalan Hang Tuah's branch of the respondent. The appellant was allowed to draw on its funds in the current account by issuing cheques. A

[5] It was the appellant's instruction or mandate to the respondent that for any cheque issued it must be signed by any two of the following persons, namely: B

(a) Ong Ah Sim @ Ong Swee Hoe;

(b) Lim Moi Cheng;

(c) Vong Ai Foon; and C

(d) Ong Keng Swee.

[6] It was also not in dispute that the common feature of those allegedly forged cheques was that they were all encashed over the counter and purportedly signed by Ong Ah Sim @ Ong Swee Hoe and Vong Ai Foon. They were drawn over a period of almost two years from 17 January 1994–3 October 1995. D

[7] The main allegation by the appellant against the respondent was that the purported signatures of Ong Ah Sim @ Ong Swee Hoe on those 67 cheques were forged by his co-signatory Vong Ai Foon or persons unknown and in honouring them the respondent was in breach of the mandate given to it by the appellant. E F

[8] The respondent denied the allegation on two grounds:

(a) firstly, that there was no forgery of the signatures of Ong Ah Sim @ Ong Swee Hoe on those cheques; and

(b) secondly, the conduct of the appellant's officers gave rise to an estoppel. G

[9] The High Court gave judgment to the respondent with findings that the appellant failed to prove on the balance of probability that the signatures of Ong Ah Sim @ Ong Swee Hoe on those cheques were forged and that on the facts of this case estoppel had arisen against the appellant from making any claim on those 67 cheques. H

[10] In affirming the decision of the High Court, the Court of Appeal held that the evidence adduced had been 'demonstrably appreciated' by the learned trial judge who gave cogent reasons for his decision. I

[11] Before this court, learned counsel for the appellant took a two-pronged approach:

A (a) firstly, he submitted that the case should be remitted to the Court of Appeal for rehearing as there was miscarriage of justice occasioned in the earlier hearing; and

(b) secondly, he argued that connected to the question posed the learned B High Court trial judge erred in refusing to admit the crucial piece of similar fact evidence adduced before the Sessions Court of Melaka in another case between the same parties involving forged cheques of the appellant as well.

C **[12]** We will deal first with the question posed for consideration.

[13] Having heard the submissions of parties and after giving them our anxious consideration we are of the view that the substratum of the submission for the appellant does not relate to the question posed. Whilst it is trite law that D all admissible evidence are relevant evidence, the converse is not necessarily true. Although a piece of evidence may be relevant it may be inadmissible for various reasons such as it is hearsay evidence or its prejudicial effect outweighs its probative value.

E **[14]** However, in respect of this appeal we are of the view, after careful and closer re-examination of the question posed juxtaposed with the contention advanced for the appellant, an answer to it would neither address the real grievance of the appellant as ventilated nor resolve the dispute between the parties.

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[15] As such and relying on the decision of this court in *Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Anor v Arab-Malaysian Prima Realty Sdn Bhd & Ors* [2003] 3 MLJ 257 we decline to answer the question G posed (see also: *Joceline Tan Poh Choo & Ors v V Muthusamy* [2008] 6 MLJ 621 and *Meidi-Ya Co Ltd, Japan & Anor v Meidi (M) Sdn Bhd* [2009] 2 MLJ 14).

[16] At any rate, even if we were to answer the question posed, it would be in the affirmative. However, for the reasons stated earlier it would not give any H advantage to the appellant.

[17] Accordingly, this appeal is dismissed with costs. And that should be the end of this matter.

I **[18]** However, learned counsel for the appellant also strenuously argued that there has been a miscarriage of justice in the conduct of and in the decision-making processes of the courts below.

[19] Learned counsel contended that the learned High Court trial judge

committed errors when he described and marked as AR cards (P75 and P76) the specimen signature cards containing the sample signatures of the appellant's cheques' signatories.

[20] And whilst PW1 opined that the signature in P76 was the same as in the specimen signature in P73 the Court of Appeal went on to find that PW1 openly admitted that P73 was never compared with those signatures in the specimen signature card kept by the respondent. This according to learned counsel for the appellant resulted in miscarriage of justice.

[21] We have examined and re-examined this issue based on the appeal records, in particular the judgments of the courts below. We are inclined to agree with learned counsel for the respondent that even if the Court of Appeal did make an error, the same was only found in the additional reason for the dismissal of the appeal. The main reason given by the Court of Appeal in dismissing the appeal was that there was proper and accurate appreciation of the evidence by the learned High Court trial judge before making the necessary findings of fact and ultimately his conclusion.

[22] As for the error in describing the specimen signature card as AR card by the learned High Court trial judge we are of the view based on his judgment that such error did not play a critical and determinative role in his final decision. There were more than sufficient evidence upon which he relied upon to come to the conclusion as he did. Indeed the fact that learned counsel for the appellant only requested for the matter to be remitted to the Court of Appeal for rehearing and not to the High Court for retrial is self-evident.

[23] In any event, even if indeed there were errors as alleged, we do not think they could amount to miscarriage of justice as to warrant the remission of this matter to the Court of Appeal for rehearing before another panel.

[24] Accordingly, we do not find any injustice or prejudice suffered by the appellant as claimed.

[25] For the foregoing reasons we decline to exercise the inherent power of this court to order a rehearing of the appeal by the Court of Appeal before another panel.

[26] YA Dato' Hashim bin Dato' Hj Yusof FCJ and Dato' James Foong Cheng Yuen FCJ have read this judgment in draft and agreed with it.

A *Appeal dismissed with costs.*

Reported by Dzulqarnain Ab Fatar

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